

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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| In the Matter of CenturyTel of Missouri, LLC and) | |
| Spectra Communications Group, LLC, d/b/a) | <u>Case No. TC-2007-0307</u> |
| CenturyTel Tariff Filings to Grandfather Remote) | Tariff Nos. JI-2007-0498 |
| Call Forward Services to Existing Customers and) | JI-2007-0499 |
| Existing Locations.) | |

**CENTURYTEL'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

COME NOW CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, d/b/a CenturyTel (collectively "CenturyTel") and respectfully submit the following proposed findings of fact, conclusions of law and order:

Syllabus: This Report and Order approves the tariff sheets submitted on January 19, 2007 by CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, d/b/a CenturyTel (collectively "CenturyTel") to grandfather Remote Call Forward service to existing customers and existing locations, and the Commission finds and determines that CenturyTel should not be required to fulfill Socket Internet's orders for Remote Call Forward service submitted after the tariff filings, before being allowed to grandfather that service.

FINDINGS OF FACT

The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence,

position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

On January 19, 2007, CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, d/b/a CenturyTel filed proposed tariff sheets to grandfather their Remote Call Forward ("RCF") service to existing customers at existing locations (these tariff filings were assigned Tariff Nos. JI-2007-0498 and JI-2007-0499, respectively). These tariff sheets reflect an effective date of February 18, 2007. On January 31, 2007, the Staff of the Commission stated that it did not object to the tariffs.¹

On February 14, 2007, Socket Telecom, LLC and Socket Holdings Corporation d/b/a Socket, Internet (collectively "Socket") filed a Request to Suspend or Reject Proposed Tariff Sheet. On that same date after the Socket motion was filed, Staff filed a responsive pleading asking the Commission to suspend the tariffs to permit further investigation. CenturyTel filed its Response in Opposition to Request to Suspend or Reject Proposed Tariff Sheets on February 15, 2007. "To allow sufficient time to study the effect of the proposed tariffs and establish an evidentiary record," the Commission suspended the proposed tariff sheets to December 18, 2007, or until otherwise ordered by the Commission. (*Order Suspending Tariffs and Scheduling Prehearing Conference*, February 15, 2007, page 2.)

On February 21, 2007, Chariton Valley Telecom Corporation and Mark Twain Communications Company filed their Application to Intervene. A Prehearing

¹ *Order Suspending Tariffs and Scheduling Prehearing Conference*, February 15, 2007, page 1.

Conference was held in this matter on March 6, 2007. The Commission granted the requested intervention on March 7; however, on April 25, Chariton Valley Telecom and Mark Twain Communications filed their Notice of Voluntary Dismissal, and the Commission took notice of the dismissal by its Notice issued April 26, 2007.

On March 22, 2007, the parties filed a Joint Motion to Establish Procedural Schedule, and the proposed schedule was adopted by the Commission's Order Setting Procedural Schedule issued on March 26, 2007.

In accordance with the Commission's March 26th Order Setting Procedural Schedule, the parties filed Direct, Rebuttal and Surrebuttal Testimony, as well as their Statement of Positions in this proceeding. Pursuant to Joint Motions to extend the hearing schedule, the Commission moved the hearing dates to allow the parties to continue settlement discussions. An evidentiary hearing was scheduled for October 18 and 19, 2007. On October 15, 2007, CenturyTel and Socket filed a joint motion asking the Commission to cancel the evidentiary hearing and instead accept submission of the case on prefiled testimony, as well as briefs to be filed on October 31. CenturyTel and Socket indicated their willingness to stipulate to the admission of the prefiled testimony into evidence, and to waive their right to cross-examine the witnesses offering that testimony. The only other active party to this case is the Staff of the Commission, and the motion represented that Staff neither opposed nor supported the motion. The Office of the Public Counsel is, by statute, a party to this, and all other cases before the Commission, but Public Counsel has not taken an active role in this case.

By its Order Granting Joint Motion To Cancel Hearing issued in this matter on October 16, 2007, the Commission granted the motion, cancelled the evidentiary hearing

scheduled for October 18 and 19, 2007, accepted into evidence the prefiled testimony submitted by the parties, assigned exhibit numbers to that testimony, and ordered that the parties file briefs on October 31, 2007.

1. CenturyTel of Missouri, LLC, a Louisiana limited liability company, and Spectra Communications Group, LLC d/b/a CenturyTel, a Delaware limited liability company, are both incumbent local exchange telecommunications companies authorized by the Commission to provide basic local telecommunications service in their respective Missouri exchanges. (Ex. 1, pp. 4-5.)

2. Socket Holdings Corporation d/b/a Socket Internet, a Missouri corporation, is an Internet service provider in Missouri, and is the parent corporation of Socket Telecom, LLC, a Missouri limited liability company certificated by the Commission as a competitive local exchange company. (Ex. 1, p. 3.)

3. As identified in CenturyTel's local exchange tariff (Ex. 2, Schedule APM 1), RCF service is a local switch-based telephone number forwarding service. With RCF, the end user has no actual telephone or telephone equipment associated with the telephone number assigned to the end user. Rather, any call to the number terminates in the CenturyTel switch to which the number is assigned, and then CenturyTel automatically forwards the call to the telephone number associated with a distant end user location specified by the customer. Like Foreign Exchange Service (FX), RCF is typically used by businesses that want to provide a local number for customers to call without actually having a physical presence in the local area. With RCF the customer pays for the local service, the RCF feature and for any applicable toll charges on all calls

terminating to the RCF'd number outside the local exchange from which the call originates. (Ex. 2, pp. 4-5, Schedule APM 1.)

4. The major conditions of the RCF service that are contained in CenturyTel's tariffs are set forth in Ex. 2, pp. 5-7. Grandfathering the service will allow current subscribers to continue to use existing RCF services at existing locations under current tariff rates, terms and conditions. However, the RCF service will not be offered to new customers, nor will additional new RCF service be available to existing customers. Existing RCF service customers will not be able to make changes to their existing service. (Ex. 2, p.7.) The number of CenturyTel customers purchasing RCF in Missouri represents only one half of one percent. (Ex. 2, p. 14.)

5. RCF service is not a technology or service feature constituting the minimum elements necessary for basic local and interexchange telecommunications service (4 CSR 240-32.100(2)), nor is it a service feature required under the Commission's Eligible Telecommunications Carriers' ("ETC's") service requirements rule (4 CSR 240-3.570(3)).

6. While Staff and Socket have suggested that RCF service may be useful in response to natural or man-made disasters, the Commission finds that the evidence presented by CenturyTel's witnesses renders such concerns moot, and such concerns can not be the basis for rejecting the subject tariffs.

7. First, of the more than 420,000 customers served by CenturyTel in Missouri, less than 1,300 of those customers (less than one half of one percent), scattered throughout Missouri, purchase RCF service. In the event of a disaster, it is likely that most, if not all, of the affected customers would not be subscribed to RCF service.

However, CenturyTel is grandfathering the service – not withdrawing the service. As the features of the service remain a functioning part of the network, the service could be provided instantaneously with the emergence of a disaster situation. (As CenturyTel's witnesses point out, one should assume that the Company and the Commission would take immediate action to ensure RCF, or any other possible service configuration, would receive the appropriate, expedited regulatory treatment as a result of a catastrophe.) (Ex 7, pp. 10-12; Ex. 9, pp. 7-8.)

8. Second, as CenturyTel Witness Ralph Teasley, Manager of Network Support Centers for CenturyTel Service Group, points out, CenturyTel has other means of readily providing service in the event of an emergency or disaster.

I would agree that assisting customers who are affected by emergencies or disasters to reestablish communications is very important. But there are other means to meet this need. For example, CenturyTel could activate a fixed call-forwarding service on the customer's line on the customer's behalf rather than using the RCF Service. I personally have a great deal of experience in dealing with outages caused by disasters during my 36-year career. I have no doubt, based on first hand experience with dealing with the aftermath of hurricanes Rita and Katrina, that CenturyTel will use all possible tools available to meet customer needs during an emergency or disaster. (Ex. 6, p. 4.)

9. Third, CenturyTel has demonstrated that it meets the standards of the Commission's own rules setting forth the requirements for all telecommunications carriers in the case of emergency situations. Commission Rule 4 CSR 240-32.060, Engineering and Maintenance, Subsection (5) provides, "Each company shall make reasonable provisions to meet emergencies resulting from lightning or power service failures, unusual and prolonged increases in traffic, absence of personnel, fire, storm or other natural disasters and shall inform its employees of procedures to be followed in the event of emergency in order to prevent or minimize interruption or impairment of

telecommunications service. . . .” The Commission’s ETC Rule requires that each applicant include “[a] demonstration of the carrier’s ability to remain functional in emergency situations, including a demonstration that the carrier has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities and is capable of managing traffic spikes resulting from emergency situations.” (4 CSR 240-3.570(2)(A)(4).)

10. The Commission is not aware of any additional requirements imposed on all carriers relating to emergency situations and, as the testimony in this proceeding clearly shows, CenturyTel has demonstrated its ability to meet the requirements of the rule for some time, most recently in 2006 during the wind and ice storms that left tens of thousands of Missourians without power and, in some instances, without water. (Ex. 9, pp. 8-9).

11. Technological obsolescence also is a factor in CenturyTel’s decision to grandfather RCF service. As CenturyTel Witness Martinez points out:

Due to rapidly changing technology, RCF is becoming an antiquated service with wireline and wireless providers offering national unlimited calling. Add to this mix the Voice Over Internet Protocol (“VoIP”) services offered by companies such as Vonage, and it quickly becomes apparent that the available competitive alternatives far exceed CenturyTel’s RCF service both in scope and in price. The availability of these types of “any distance” plans negates the need for antiquated wide area calling plans or foreign exchange service. In fact, customers actually pay more for less when they buy these outdated services. CenturyTel, itself offers nationwide calling plans in several exchanges throughout Missouri ranging from \$40 to \$50 including local service, while RCF alone costs \$20. (Ex. 2, p. 14.)

12. In explaining Staff’s general approach to requests to grandfather tariffed services, Staff Witness Voight testifies, “In all instances that I am aware of, if customers

have viable alternatives, the Staff would recommend approval of grandfathering.” (Ex. 5, p. 4.)

13. In responding to the question of whether CenturyTel’s RCF service is the only means available for business customers who want to appear to have a presence in a location for customers to make local calls, CenturyTel Witness Teasley explains:

No. While the RCF Service is useful in these rare instances, there are other alternatives. A business customer could easily set up FX Service or establish a physical line with the Call Forward, No Answer option. In fact, RCF Service may not be most attractive option for businesses as it can only handle one call at a time; and for a busy enterprise, the per minute toll charges can be more expensive than the flat-rated FX circuit. (Ex. 6, p. 4.)

14. The Commission finds that customers clearly have viable alternatives to the RCF services that CenturyTel seeks to grandfather in this proceeding. Only one-half of one percent of CenturyTel’s customers purchase its RCF service, and these customers will not be losing their existing service.

15. CenturyTel has presented significant and credible evidence through the testimony of both Mr. Martinez and Mr. Teasley that the instant tariff filings are necessary to stem abuse and violations of the RCF tariff provisions that specifically restrict RCF service to one voice call at a time (as compared to data calls) and prohibit the use of RCF service for toll bypass. The RCF service offered by CenturyTel specifically restricts a customer’s ability to use the service as a means to bypass toll charges, and this restriction is described in detail in CenturyTel’s tariff. (Ex. 2, Schedule APM-1; Ex. 3, p. 5.) In addition, CenturyTel’s RCF service specifically restricts a customer’s ability to use the number for more than one telephone call at a time. Again, this restriction is described in detail in CenturyTel’s tariff. RCF numbers are

programmed to forward one call at a time because each forwarded call is tying up an individual call path on the network. (*Id.*)

16. As explained in the testimony of CenturyTel's witnesses, under no circumstances is it appropriate to use RCF for dial-up Internet access. RCF service is not intended for this type of data traffic because it causes network congestion on the toll network (as fully explained by Mr. Teasley). Consistent with CenturyTel's tariff, RCF service may not be used for multiple simultaneous calls as in the case of a modem pool to facilitate dial-up access to the Internet. An ISP's router may contain multiple modems capable of handling several simultaneous online sessions. ISPs, especially those in rural areas, are capable of serving hundreds of customers using one local or toll-free number as customers' modems dialing that number are routed to a modem bank. Only if all the available modems in the ISP's modem bank are being used will a dial-up customer receive a busy signal. Moreover, dial-up Internet users' hold-time, the duration of the seizure of the phone company's access line, often exceeds that of a normal phone conversation. As previously discussed, the purpose of CenturyTel's RCF service was intended as a way to provide customers with a means to allow others to make voice calls from foreign exchanges. (Ex. 2, pp. 9-12; Ex. 3, pp. 6-11.)

17. CenturyTel's witnesses testified that Socket Internet has in the past requested CenturyTel RCF service in several exchanges and has requested that the RCF number be initially forwarded to a toll-free number, 888-720-4045, that directs callers to a voice prompt, which places callers into a queue for such things as customer service or technical support. CenturyTel collected switching, transport and other access charges for the use of its switch(es) and facilities. (Ex. 2, pp. 10-11.) Before CenturyTel recognized

that Socket Telecom was submitting port requests that move the RCF Service number outside of its original rate center, CenturyTel ported RCF Service numbers that have created congestion on its network. As CenturyTel's expert witness, responsible for the daily operational duties of CenturyTel's Network Support Center in Wentzville, Missouri, Mr. Teasley provided substantive testimony addressing how the increase in traffic volume could jeopardize CenturyTel's network and impair or inhibit meeting the needs of its end-user customers if its toll trunks are overloaded with ISP-bound traffic. His Direct Testimony described the problems with placing ISP-bound traffic on the common trunk group, disrupting pre-basic 911 service, disrupting calls placed by both CenturyTel *and* Socket customers (and sometimes Embarq and AT&T customers), and gave clear, real-world examples of how ISP-bound traffic causes network congestion. Indeed, Mr. Teasley provided a specific example concerning the impacts of Socket's request to port out two RCF Service lines in the Rockville, Missouri office. As Mr. Teasley testified, it was necessary for not only CenturyTel, but also for Embarq (since the intraLATA trunk group terminates in Warrensburg, which is the tandem switch for the Rockville exchange) to install facilities to increase the size of the trunk group to eliminate blockage that the increased traffic created following the completion of these porting requests. (Ex. 6, p. 3; Ex. 10, p. 2.)

18. The evidence reveals that while Socket Witness Kohly attempted to minimize these real concerns with a purported traffic analysis of his own (which appears to be strictly confined to measuring simultaneous calls and not based on any industry-standard traffic study methodology), Mr. Teasley rebuts such testimony as misleading,

discussing how blockage occurs after the number is publicized for ISP access and the dial-up ISP traffic ramps up. (Ex. 10, pp. 3-4.)

19. In addition, the evidence shows that Socket's inappropriate use of RCF service allows it to bypass toll charges. When Socket Internet requests that the RCF number be forwarded to a toll-free number for the purpose of providing its customers with a toll-free way to make voice calls to Socket Internet's Customer Service center, any calls outside the local calling area will be properly compensated to both CenturyTel and the toll-free number provider such as AT&T or MCI; and each call would have a separate call path for each call. The toll-free number provider will assess Socket Internet for the use of its toll-free calling service, while the toll-free provider will compensate CenturyTel for the use of its network. When the RCF number is ported by its affiliate CLEC, Socket Telecom, calls continue to use the exact same CenturyTel switch(es) and facilities; calls continue to terminate to the same customer located outside the local calling area; however, CenturyTel no longer receives compensation. In fact, CenturyTel now becomes responsible for significant increases in facilities associated with multiple simultaneous dial-up ISP calls with significantly longer holding times, with absolutely no opportunity for cost recovery; while Socket Internet has bypassed toll costs or network investment. (Ex. 2, pp. 11-12.)

20. Another form of abuse utilizing RCF to deceptively avoid lawfully imposed toll charges involves prison inmates and a "burn line" scam, specifically described in the Direct Testimony of Mr. Martinez addressing the rationale for grandfathering RCF service in the state of Washington. "Prisoners, with assistance from someone outside of prison, would use a stolen social security number and a false billing

address to set up a "burn line." A prisoner would set up an RCF service line and forward the number just about anywhere in the United States; many of which were determined to be cell phones." (Ex. 2, pp. 8-9; Schedule APM 2.) As CenturyTel's Joint Brief pointed out, Case No. 07-04026-01/07-CR-C-SOW, United States District Court for the Western District of Missouri, Central Division, involved a May 31 federal indictment concerning a fraud conspiracy that included stealing the identities of other people and using them to provide cell phone calls from state prison inmates. "At all times material, local calls from the prison could be directed and forwarded from a local number to a cellular phone, and the holders of those cellular phones were able to accept the charges for the call. This would result in a charge for the local call from the prison, and further additional and different charge for the call, and air-time, to the cellular phone." (Grand Jury Indictment, Count I, Paragraph 4.)

21. Subsequent to the filing of the tariffs to grandfather RCF service, on February 8, 2007 Socket submitted a request for RCF service in 61 exchanges. (Ex. 2, p. 12.) As Socket Internet readily admits in its prefiled testimony, Socket Internet is attempting to purchase CenturyTel's RCF service **in conjunction with** a subsequent Socket Telecom porting order. As the evidence clearly reveals, this is simply a scheme by Socket to take advantage of regulatory arbitrage, whereby it uses RCF service for multiple simultaneous calls, toll by-pass and data traffic, all in violation of CenturyTel's tariff. Based on the tariff restrictions for RCF Service, as well as general tariff provisions that allow CenturyTel to refuse to provision services because of fraud and abuse, CenturyTel may legitimately refuse to grant the 61 additional RCF service numbers

requested by Socket.² (Ex. 2, pages 12-13; Ex. 3, pages 6-10, 11; Ex. 7, pages 2-4; Ex. 9, pages 2, 3, 4-5, 6-7; Ex. 10, page 4.)

22. Socket Witness Kohly testifies to this “continuum of actions” in his Direct Testimony where, in addressing the order for 61 RCF numbers, he states:

In order to obtain numbers to port to Socket Telecom, Socket Internet attempted to subscribe to CenturyTel’s Remote Call Forward Service. Once those services were provisioned, Socket Internet was going to request that Socket Telecom add those numbers to its existing service from Socket Telecom by porting the numbers. (Ex. 1, pp. 6-7, emphasis added.)

23. The Commission finds that such actions permit Socket to take advantage of regulatory arbitrage, whereby it uses RCF service for multiple simultaneous calls, toll by-pass and data traffic, all in violation of CenturyTel’s tariff. As described previously, once the RCF number is ported, the number is subsequently terminated to the ISP’s modem, where it allows multiple customers calls to have simultaneous access to the modem. Consistent with CenturyTel’s tariff, RCF service may not be used for multiple simultaneous calls such as this, as it causes network congestion on the toll network and negatively impacts consumers trying to make toll calls for which the network was

² As fully discussed in the testimony of CenturyTel’s witnesses, any CenturyTel customer, whether retail or wholesale, must comply with the terms by which the Company makes its services available, including restrictions on use. CenturyTel denied Socket’s request for 61 additional RCF service lines pursuant to Section 6.B.10 of CenturyTel’s local exchange tariff, because in CenturyTel’s judgment, providing Socket’s request for additional RCF service would interfere with and impede CenturyTel’s ability to provide service to other customers. CenturyTel also noted that the tariff (Section 6.B.11) requires that RCF service be taken for a minimum three month period.

In discussing the general restrictions on use, CenturyTel’s witnesses noted that CenturyTel’s tariff allows the company to disconnect services, without notice when any transmission service is used “in a manner as to interfere unreasonably with other services or service of another user, constitute abuse, fraud or tend to injuriously affect the efficiency of the Company’s plant, property or service.” (CenturyTel of Missouri, LLC, PSC MO. NO. 1, § 2, Original Sheet 9; Spectra Communications Group, LLC d/b/a CenturyTel, PSC MO NO. 1, § 2, Original Sheet 9.) In addition, CenturyTel’s tariff allows the company to refuse to furnish service and/or disconnect existing service for a customer who, “demonstrates fraudulent means of obtaining, or attempting to obtain, or assisting another to obtain, service by any trick, scheme, false representation, false credit device, or by or through any other fraudulent means or device whatsoever, with intent to avoid the payment, in whole or in part, of the charge for such service.” (*Id.*)

designed. Regarding toll bypass, porting the number allows Socket to avoid the expense of paying for toll-free service for interexchange calls to its own customer support functions while shifting the cost to CenturyTel of transporting these calls from CenturyTel's central office to the tandem. This occurs because customers are dialing a local number that previously was RCF'd to a toll-free number, but now has been ported to a non-RCF "local" number. (Ex. 7, p. 3.)

24. Based upon the competent and substantial evidence in the record on this issue, the Commission refuses to ignore the completely transparent nature of Socket's actions and, therefore, will not adopt Mr. Kohly's argument that once the port occurs, the RCF tariff provisions simply do not apply. Obviously, Socket Internet would not be able to perpetrate this abuse on its own because CenturyTel, in accordance with its tariff, would not allow Socket Internet to use RCF service lines for multiple dialers sending data transmissions simultaneously.

25. In Case No. TO-2006-0299, the Commission arbitrated and approved, pursuant to 47 U.S.C. §252, the terms of an interconnection agreement between Socket Telecom and CenturyTel. CenturyTel of Missouri and Spectra have signed separate but similar interconnection agreements with Socket Telecom. The Commission rejects Socket's assertions that CenturyTel is simply trying to circumvent and re-litigate the Commission's arbitration decision in Case No. TO-2006-0299, by the filing of its tariff revisions to grandfather existing RCF services. The Commission further finds that pursuant to CenturyTel's public tariff filings with 30-day effective dates, lawful and sufficient notice was provided to all of CenturyTel's customers, including the Socket

entities who obviously had notice of these filings, providing the opportunity to file their motion to suspend or reject herein.

26. The Commission further finds that Socket's use of the ported number has a significant bearing on the CenturyTel network. As CenturyTel Witness Martinez explains:

The network supports all of a carrier's services simultaneously much like a transportation system supports multiple forms of transportation. The pricing and provisioning of services vary in proportion to each services use of the network. An improper use of a service may not only impede that service but will likely have an impact on other services use of the network in a discriminatory manner. For example, if RCF service is allowed to be used in this manner, customers who purchase toll-free 800 service either from CenturyTel or another carrier will be paying CenturyTel for the cost of originating the toll-free 800 traffic and thereby placing such carriers in a position of unnecessarily subsidizing Socket's cost of operation. In other words, both the toll-free 800 subscribers and Socket's ISP traffic are riding the same transport network with other toll customers; but Socket, by refusing to pay its share of the transport costs, is being subsidized by all other paying customers using this common network. (Ex. 9, pp. 6-7.)

27. While Staff Witness Voight appears to suggest that network congestion problems resulting from Socket's improper use of RCF numbers can be remedied by the interconnection agreement between the parties (discussing requirements for Points of Interconnection or POIs, should the traffic in question reach certain predetermined levels over three consecutive months)³, the evidence reveals, and the Commission so finds, that Socket's actions in interpreting those agreements clearly belies any such "remedy."

28. As the evidence clearly reveals, CenturyTel's tariff filing does nothing to prevent Socket from offering RCF to local exchange customers. It does not prevent Socket Telecom, LLC from obtaining its own numbering resources and establishing its own RCF service for sale to local exchange customers. In fact, Socket Telecom, LLC

³ Ex. 5, p. 5.

already has numbering resources in several of CenturyTel's exchanges and the Commission takes notice of the fact that Socket Telecom's tariff contains RCF service on a retail basis. (Ex. 2, pp. 13-14.) In addition, the Commission finds Socket's arguments regarding purported customer confusion associated with any new NPA/NXX code to be unpersuasive, particularly as a basis for denying CenturyTel its lawful right to stem tariff abuses as documented herein.

CONCLUSIONS OF LAW

The Missouri Public Service Commission has arrived at the following conclusions of law.

1. CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, d/b/a CenturyTel are each a "telecommunications company" and a "public utility" as those terms are defined in Section 386.020, RSMo 2000, and are therefore fully subject to the regulatory jurisdiction of the Commission. Each of the companies is an incumbent local exchange carrier.

2. In accordance with Chapter 392 and the Commission's Rules, on January 19, 2007, CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, d/b/a CenturyTel filed proposed tariff sheets to grandfather their Remote Call Forward ("RCF") service to existing customers at existing locations (these tariff filings were assigned Tariff Nos. JI-2007-0498 and JI-2007-0499, respectively). These tariff sheets reflect an effective date of February 18, 2007. By its *Order Suspending Tariffs and Scheduling Prehearing Conference*, issued February 15, 2007, the Commission has suspended the subject tariff sheets to December 18, 2007, or until otherwise ordered by the Commission.

Issue 1. Should the Commission approve CenturyTel of Missouri, LLC's and Spectra Communications Group, LLC d/b/a CenturyTel's (collectively "CenturyTel") tariff filings to grandfather Remote Call Forward ("RCF") service to existing customers and existing locations?

3. Yes. It is a lawful and sound management decision, within CenturyTel's prerogative, to grandfather its RCF service – a non-essential telecommunications service – to existing customers and existing locations.

4. The Public Service Commission "is purely a creature of statute" and its "powers are limited to those conferred by the [Missouri] statutes, either expressly, or by clear implication as necessary to carry out the powers specifically granted." State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission, 585 S.W.2d 41, 47 (Mo. banc 1979); State ex rel. City of West Plains v. Public Service Commission, 310 S.W.2d 925, 928 (Mo. banc 1958). While early case law provided that the Commission has "plenary power to coerce a public utility corporation into a safe and adequate service,"⁴ no one could reasonably suggest that such an issue is presented in this proceeding, particularly in today's competitive telecommunications environment. Indeed, no party has pointed to any authority that prevents CenturyTel from withdrawing, let alone grandfathering, its RCF service.⁵

5. Clearly, RCF service is not a technology or service feature constituting the minimum elements necessary for basic local and interexchange telecommunications service (4 CSR 240-32.100(2)), nor is it a service feature required under the

⁴ State ex rel. Missouri Southern R. Co. v. Public Service Commission, 259 Mo. 704, ___, 168 S.W. 1156, 1163 (banc 1914).

⁵ Socket's blanket assertions regarding "public interest" concerns, notwithstanding. See, Case No. IT-2002-1165, 11 Mo. P.S.C. 3d 385 ("Public Counsel has not pointed to any authority that prevents Bell from withdrawing its Local Plus and Designated Number services.")

Commission's Eligible Telecommunications Carriers' ("ETC's") service requirements rule (4 CSR 240-3.570(3)).

6. CenturyTel has demonstrated that it meets the standards of the Commission's own rules setting forth the requirements for all telecommunications carriers in the case of emergency situations. Commission Rule 4 CSR 240-32.060, Engineering and Maintenance, Subsection (5) provides, "Each company shall make reasonable provisions to meet emergencies resulting from lightning or power service failures, unusual and prolonged increases in traffic, absence of personnel, fire, storm or other natural disasters and shall inform its employees of procedures to be followed in the event of emergency in order to prevent or minimize interruption or impairment of telecommunications service. . . ." The Commission's ETC Rule requires that each applicant include "[a] demonstration of the carrier's ability to remain functional in emergency situations, including a demonstration that the carrier has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities and is capable of managing traffic spikes resulting from emergency situations." (4 CSR 240-3.570(2)(A)(4).)

7. The Commisison is not aware of any additional requirements imposed on all carriers relating to emergency situations and, as the testimony in this proceeding clearly shows, CenturyTel has demonstrated its ability to meet the requirements of the rule for some time, most recently in 2006 during the wind and ice storms that left tens of thousands of Missourians without power and, in some instances, without water. (Ex. 9, pp. 8-9).

8. Staff's general approach to requests to grandfather tariffed services was explained by Staff Witness Voight as follows: "In all instances that I am aware of, if customers have viable alternatives, the Staff would recommend approval of grandfathering." (Ex. 5, p. 4.) The Commission concludes that customers clearly have viable alternatives to the RCF services that CenturyTel seeks to grandfather in this proceeding, as fully set forth herein. The Commission notes that only one-half of one percent of CenturyTel's customers purchase its RCF service, and these customers will not be losing their existing service.

9. The instant tariff filings are necessary to stem abuse and violations of the RCF tariff provisions that specifically restrict RCF service to one voice call at a time (as compared to data calls) and prohibit the use of RCF service for toll bypass. The RCF service offered by CenturyTel specifically restricts a customer's ability to use the service as a means to bypass toll charges, and this restriction is described in detail in CenturyTel's tariff. (Ex. 2, Schedule APM-1; Ex. 3, p. 5.) In addition, CenturyTel's RCF service specifically restricts a customer's ability to use the number for more than one telephone call at a time. Again, this restriction is described in detail in CenturyTel's tariff. RCF numbers are programmed to forward one call at a time because each forwarded call is tying up an individual call path on the network. (*Id.*) Such violations and abuse of this non-essential telecommunications service by Internet Service Providers ("ISPs") who place multiple simultaneous dial-up Internet calling on a ported RCF service number can cause network congestion on the toll network and negatively impact other telecommunications consumers trying to make toll voice calls for which this

network was designed. (Ex. 2, pages 5-7, 9-11, 15; Ex. 3, pages 5-6, 6-10, 11; Ex. 7, pages 2-4, 8; Ex. 6, pages 2-3; Ex. 9, pages 2, 3, 7, 8; Ex. 10, pages 2-3.)

10. Given CenturyTel's experience in the state of Washington, as well as recent criminal activities referenced in Missouri, RCF service is subject to serious fraud perpetrated by prison inmates and their co-conspirators causing large revenue losses to the Company. Such fraud and abuse of RCF service by prison inmates and their co-conspirators provides further justification for grandfathering CenturyTel's RCF service, especially in light of the fact that so few legitimate CenturyTel customers subscribe to the service. (Ex. 2, pages 8-9.)

Issue 2. Should the Commission require CenturyTel to fulfill Socket Internet's orders for RCF service submitted after the tariff filings, before being allowed to grandfather that service?

11. No. Subsequent to the filing of the tariffs to grandfather RCF service, on February 8, 2007 Socket submitted a request for RCF service in 61 exchanges. As Socket Internet readily admits in its prefiled testimony, Socket Internet is attempting to purchase CenturyTel's RCF service **in conjunction with** a subsequent Socket Telecom porting order. This is simply a scheme by Socket to take advantage of regulatory arbitrage, whereby it uses RCF service for multiple simultaneous calls, toll by-pass and data traffic, all in violation of CenturyTel's tariff. Based on the tariff restrictions for RCF Service, as well as general tariff provisions that allow CenturyTel to refuse to provision services because of fraud and abuse, CenturyTel may legitimately refuse to grant the 61 additional RCF service numbers requested by Socket. (Ex. 2, pages 12-13; Ex. 3, pages 6-10, 11; Ex. 7, pages 2-4; Ex. 9, pages 2, 3, 4-5, 6-7; Ex. 10, page 4.)

12. In filing its request to suspend/reject the proposed tariffs and to require CenturyTel to fulfill Socket's post-tariff filing orders, Socket simply wants to shift the cost of transport and facility augmentation (*i.e.*, its costs of doing business) to CenturyTel, so that CenturyTel inappropriately bears the burden of providing service to Socket ISP customers. CenturyTel's testimony details the problems with placing ISP-bound traffic on the common trunk group and how ISP-bound traffic causes network congestion. (Ex. 2, pages 15-16; Ex. 3, pages 6-10, 11; Ex. 7, pages 2-4, 8; Ex. 9, pages 2, 3; Ex. 10, pages 2-4.)

13 Socket Internet, to the extent that it needs Remote Call Forward services, has the ability to purchase these services from Socket Telecom's tariffed services. The claimed need for CenturyTel numbers because there would be less confusion for its customers is unfounded. CenturyTel routinely introduces new NPA/NXXs to its customers without any resulting confusion. (Ex. 2, pages 13-16; Ex. 3, page 6; Ex. 7, pages 5-6.)

CONCLUSION

Having considered the proposed tariff sheets, the evidence submitted by the parties and their respective briefs, the Commission finds and concludes that the tariff sheets submitted on January 19, 2007 by CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, d/b/a CenturyTel (collectively "CenturyTel") to grandfather Remote Call Forward service to existing customers and existing locations are lawful, reasonable, in the public interest and should be approved. The Commission further finds and concludes that CenturyTel should not be required to fulfill Socket Internet's orders for Remote Call Forward service submitted after the tariff filings,

before being allowed to grandfather that service. Therefore, the relief requested in Socket's Request to Suspend or Reject Proposed Tariff Sheet is denied.

IT IS THEREFORE ORDERED THAT:

1. The proposed tariff sheets submitted on January 19, 2007, by CenturyTel of Missouri, LLC, and assigned Tariff No. JI-2007-0498, are approved on and after the effective date of this Order.

2. The proposed tariff sheets submitted on January 19, 2007, by Spectra Communications Group, LLC, d/b/a CenturyTel, and assigned Tariff No. JI-2007-0499, are approved on and after the effective date of this Order.

3. The request of Socket to require CenturyTel to fulfill Socket Internet's orders for RCF service submitted after the tariff filings, before being allowed to grandfather that service, is denied.

4, This Order shall become effective on _____, 2007.

Respectfully submitted,

/s/ **Larry W. Dority**

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 31st day of October, 2007.

/s/ Larry W. Dority

Larry W. Dority